17-581

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 195.

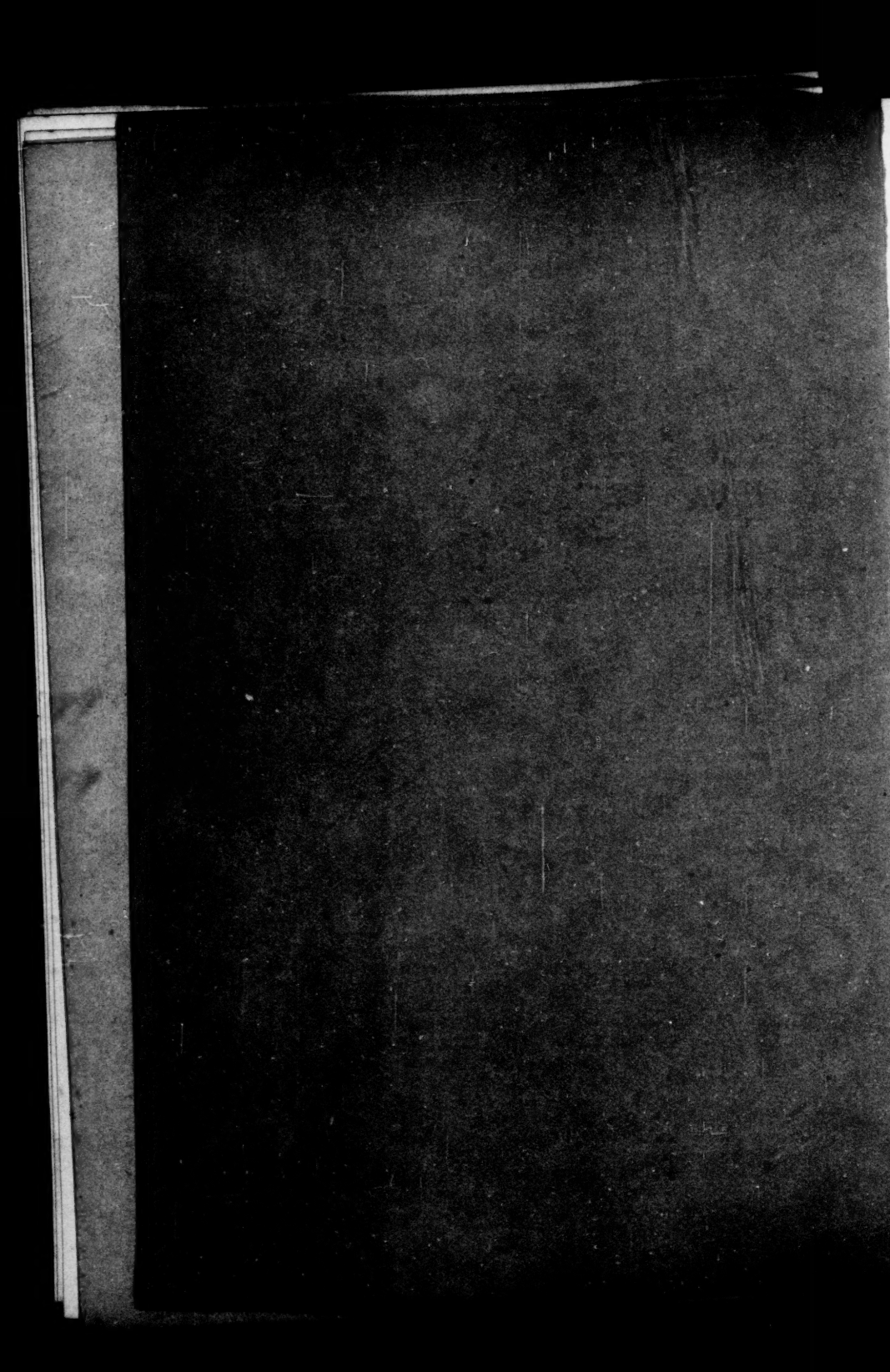
THE MEMPHIS & CHARLESTON RAILROAD COMPANY, APPELLANT,

vs.

THE STATE OF ALABAMA, FOR THE USE OF JACKSON COUNTY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED MARCH 8, 1880.



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STATE OF ALABAMA,
Jackson Co.:

THE STATE OF ALABAMA, TO THE USE OF Jackson County,
vs.
THE MEMPHIS AND CHARLESTON RAILROAD Company.

To William R. Larkin, Johnson F. Martin, John Snodgrass, James White, Samuel R. Cruse, J. R. Woodall, G. G. Lilly, John A. Grant, and John Bradley:

You are hereby notified that, as the tax collector for Jackson County, I have ascertained that the Memphis and Charleston Railroad Company, a corporation chartered under the laws of Alabama, having parts of its line of road, rolling stock, and other property in Jackson County, conducting the ordinary business of a common carrier therein in the year 1869, became in said year liable to taxation for State and county purposes, upon its taxable property, and that said corporation and its property was, by reason thereof, in and during the year 1869 taxed in the manner prescribed by law for State purposes in the sum of three thousand seven hundred and fifty-nine dollars and fifty-five cents, and for county purposes in the sum of three thousand seven hundred and fifty-nine and fifty-five cents;

2 that the said corporation made default in the payment of said taxes for the year 1869 to Jackson County, and is now lawfully due Jackson County the sum of three thousand seven hundred and fifty-nine dollars and fifty-five cents as delinquent taxes to Jackson County for the year 1869, and that said Memphis and Charleston Railroad Company is a delinquent tax-payer in said Jackson County in said sum of money, taxes for the year 1869.

You are further notified that as such tax collector for Jackson County I have ascertained that you are indebted to or have in your possession or under your control money or effects, the property of the Memphis and Charleston Railroad Company, said defaulting tax-payer for said year. You are, therefore, hereby personally notified to appear at the present term of the circuit court to be held for Jackson County, at the place of holding the same, and within ten days after the service hereof, then and there, at the suit of the State of Alabama, to the use of Jackson County, versus the Memphis and Charleston Railroad Company, to answer this as a garnisheed under oath as to such indebtedness and what money or effects you have in your hands belonging to the Memphis and Charleston Railroad Company, the said defaulting tax-payer.

3 Witness my hand this 17th Oct., 1879.

JAMES M. GULLATT,
Tax Collector for Jackson County.

Executed the within writ of garnishment by leaving copy in person with J. F. Martin, John Snodgrass, W. R. Larkin, J. R. Woodall, G. G. Lilly.

JAMES M. GULLATT,
Tax Collector.

OCT. 21, 1879.

2917——1

A branch of this original garnishment issues to Madison County, Alabama, to be executed on the garnishees, S. R. Cruse, J. A. Grant, James White, and John Bradley. All said garnishments are upon the same cause of action, and constitute but one suit.

JAMES M. GULLATT,
Tax Collector.

Filed October 22nd, 1879. J. H. Gregory, clerk circuit court.

4 STATE OF ALABAMA, *Jackson Co.:*

Before me, J. H. Gregory, clerk of the circuit court in and for the county of Jackson, State of Alabama, came James M. Gullatt, tax collector of Jackson County, who, being sworn, says that he has this day commenced in the circuit court of said county a proceeding by garnishment, in the the name of the State of Alabama to the use of Jackson County, against the Memphis and Charleston Railroad Company; and that he is informed and believes that the president, secretary, cashier, and managing agents of said corporation reside out of the State of Alabama; some one or more may be temporarily within the State.

J. M. GULLATT.

Sworn to and subscribed before me Oct. 17th, 1879.

J. H. GREGORY,
Clerk C. C.

Filed October 17th, 1879.

J. H. GREGORY, *C. C. C.*

5 In the circuit court, Jackson County, Alabama, October term, 1879.

THE STATE OF ALABAMA, TO THE USE OF Jackson County, plaintiff,
vs.
THE MEMPHIS AND CHARLESTON RAILROAD Company, defendants.

The plaintiff, the State of Alabama, who sues to the use of Jackson County, by attorney complains of the Memphis and Charleston Railroad Company, a corporation charted under the laws of Alabama, and doing the ordinary business of a common carrier of passengers and freight in said State, at, to wit, in the State of Alabama, and in Jackson County, in the years 1869 to 1879, inclusive, and which corporation has been by the process of garnishment summoned to answer the plaintiff in an action of debt; and plaintiff demands of the defendant the sum of three thousand seven hundred and fifty-nine dollars and fifty-five cents, which said defendant owes to, and unjustly detains from, said plaintiff, for that, whereas the

6 said defendant heretofore, to wit, on the first day of September, 1869, became indebted to the plaintiff in the sum of thirty-seven hundred and fifty-nine dollars and fifty-five cents, the amount of the county tax levied and assessed upon the value of the property of defendant, situated in the State of Alabama, and in said Jackson County, in the said year 1869, which said county tax was in the 1869, in the manner required by law,

levied and assessed upon the property of said defendant, in an amount not exceeding the rate levied by the State, and upon subjects or property liable to taxation; and said defendant having failed and refused, to pay said county tax at the time the same became due, the said defendant, on the 30th day of November, 1869, became a delinquent tax-payer in said county of Jackson, Alabama, for the said amount of county tax for the year 1869, and is liable to and due the plaintiff the said amount of money and taxes, with the interest due thereon. Yet the said defendant, although often requested, hath not as yet paid the sum of thirty-seven hundred and fifty-nine dollars and fifty-five cents, so to plaintiff due and by plaintiff demanded, or any part thereof; but hath hitherto wholly refused and still refuses, to the damage of plaintiff in said sum of money and the interest
7 thereof, and therefore plaintiff brings this suit.

Plaintiff avers that in the year 1869 the president and secretary of said railroad company, which is a corporation chartered under and by the laws of Alabama, and doing the ordinary business of a common carrier of passengers and freight in the State of Alabama, and in said Jackson County, made in said year and returned to the State auditor a statement or tax list under oath, in accordance with section 24 of the revenue act of Alabama approved December 31st, 1868, of the total length of said railroad, including right of way, road-bed, side track, and main track, in this State, and the total length and value thereof in each county in the State, and the number and value of their locomotive engines, passenger, freight, platform, construction, and other cars, with the value thereof; that the said returns or statements so by said railroad officers made and returned to the State auditor, who, with the tax-list of other railroad companies whose roads were wholly or partly in Alabama, assessed the property of said railroads in Alabama, the defendant's property included, for taxes due to the State for the year 1869, and afterwards, to wit, at the time and place required by law, the State board of equalization of railroad property met
8 in the year 1869 and equalized the property of railroad companies in Alabama, the property of defendant included as by the said defendant returned to the auditor of State. The said defendant had opportunity to be present at said time and place. The value of the whole of defendant's property subject to taxation within the State of Alabama, and subject to equalization with other railroad property, was ascertained and fixed at the value of one million eight hundred and two thousand two hundred and fifty dollars taxable for State purposes, and at the value assessed by the auditor and equalized by board; and plaintiff further avers that after the equalization of said property of defendant with that of other railroads in Alabama in the year 1869 that the State auditor of Alabama ascertained the number and value of the locomotive engines, passenger, freight, platform, construction, and other cars, and value thereof pro rata to each mile of railroad track of defendant's railroad, and the said State auditor did, in the said year 1869, notify the assessor of taxes for the county of Jackson for said year of the number of miles of track and the value thereof, and the proportionate value of the personal property tax-
9 able in Jackson County, in said year 1869; that the number of miles of the main track so by the auditor of State certified to the assessor of taxes for the county of Jackson as situated in said county was $40\frac{9}{10}$ miles, at the value of four hundred and nine thousand dollars; the

number of miles of side track $2\frac{5}{10}$ miles, and the value thereof twenty-five thousand dollars; the proportionate value of the rolling stock, sixty-six thousand four hundred and twenty-two dollars and eighty-seven cents; and that the court of county commissioners for Jackson County, on the 9th of March, 1869, at a *time* of said court then held, levied a county tax for general county purposes of fifty per centum on the State tax levied for said year upon the property of defendant situated in said county, as well as upon the property of individual tax-payers therein; and on the 28th day of June, 1869, the court of county commissioners for Jackson County, at a term of said court then held, levied a special tax for particular purposes upon the value of defendant's property situate in said county, as well as upon the property of individual tax-payers therein, at the rate of thirty-three and one-third per centum on the State and general county taxes added for the said year 1869, as assessed upon the property of said railroad company for year 1869 by the State.

10 And plaintiff further avers that after the said tax assessor for the county of Jackson had reserved the certificate of the auditor of the ascertainment of said defendant's property, added the value of one house and lot in Scottsboro', Alabama, at the sum or value of three hundred dollars, forty acres of land near Scottsboro', at forty dollars, and the tools of said railroad company in said county, valued at five hundred dollars, and upon the property last mentioned taxes were assessed by the said assessor for the county in the same manner and to the same extent of the value as upon the property of individuals, so that plaintiff avers that the total value of the property of the defendant upon which said county taxes for general purposes and special taxes for particular county purposes were assessed, levied upon, and ascertained, amounted to the sum of five hundred and one thousand two hundred and seventy-two dollars and eighty-seven cents, less the value of the local assessment aforesaid, and the amount of the taxes levied and assessed and rightfully due to the plaintiff, amounts to the sum of thirty-seven hundred and fifty-nine dollars and fifty-five cents for the said year 1869; and plaintiff, by attorney, complains of the Memphis & Charleston Railroad Company, who has been summoned by the process of garnishment to answer the said plaint-

11 iff in an action of debt, and plaintiff demands of the defendant the sum of thirty-seven hundred and fifty-nine dollars and fifty-five cents, which the defendant owes to and unjustly detains from the plaintiff, with the interest thereon from the said 30th day of November, 1869, as delinquent tax for the year 1869, due from the defendant to the plaintiff, by reason of the facts of promises thereinbefore told, which said amount of tax for year 1869 is due the plaintiff for the year 1869 as delinquent taxes, yet the said defendant, although often requsted, hath not as yet paid the sum of thirty-seven hundred fifty-nine dollars and fifty-five cents due to the plaintiff, or any part thereof, to said plaintiff, but hath hitherto wholly refused, and still refuses, to the damage of the plaintiff in said sum of money, with the lawful interest thereon from the 30th day of November, 1869, and therefore plaintiff brings this suit, &c.

JAMES M. GULLATT,
Tax Collector for Jackson Co., Ala.
By Attorneys, ROBINSON & BROWN.

Filed Oct. 28th, 1879. J. H. Gregory, clerk circuit court.

12 STATE OF ALABAMA, *Jackson County:*

THE STATE OF ALABAMA, TO THE USE OF JACKSON COUNTY,
vs.
THE MEMPHIS AND CHARLESTON RAILROAD COMPANY.

To William R. Larkin, Johnson F. Martin, John Snodgrass, James White, Samuel R. Cruse, and J. R. Woodall, G. G. Lilly, and John A. Grant, and John Bradley:

You are hereby notified that, as the tax collector for Jackson County, I have ascertained that the Memphis & Chaleston Railroad Company, a corporation chartered under the laws of Alabama, having parts of its line of road, rolling stock, and other property in Jackson County, conducting the ordinary business of a common carrier thereon in the year 1869, became in said year liable to taxation for State and county purposes upon its taxable , was by reason thereof, in and during the year 1869, taxed in the manner prescribed by for State purposes in the sum of three thousand seven hundred and fifty-nine dollars and fifty-five cents, and for county purposes in the sum of three thousand seven hundred and fifty-nine dollars and fifty-five cents; that the said corporation made default in the payment of said taxes for the year 1869, and that said Memphis and Charleston Railroad Company is a delinquent tax-payer in said Jackson
13 County in said sum of money, taxes for the year 1869. You are further notified that as such tax collector for Jackson County I have ascertained that you are indebted to or have in your possession or under your control money or effects the property of the Memphis and Charleston Railroad Company, said defaulting tax-payer for the said year. You are therefore hereby personally notified to appear at the present term of the circuit court in Jackson County, in the place of holding the same and *written* ten days after the service thereof, then and there at the suit of the State of Alabama, to the use of Jackson County, versus the Memphis and Charleston Railroad Company, to answer as a garnishee under oath as to such indebtedness, and what money or effects you have in your hands belonging to the Memphis and Charleston Railroad Company, said defaulting tax-payer.

Witness my hand this 17th October, 1879.

JAMES M. GULLATT,
Tax Collector for Jackson County.

Executed this October 21, 1879, by handing copy of within to S. R. Cruse and a copy to J. A. Grant.

JOHN C. THOMAS,
Sheriff, Madison County.

Executed by handing copy of within to James White and a copy to John Bradley, this October 23d, 1879.

JOHN C. THOMAS, *Sheriff.*

14 A branch of this original garnishment issues to Madison County, Alabama, to be executed on the garnishees S. R. Cruse, J. A.

Grant, James White, John Bradley, all said garnishments are upon the same cause of action and constitute but one suit.

A true copy.

JAMES M. GULLATT,
Tax Collector.

Received in office, this Oct. 21st, 1879.

JOHN C. THOMAS,
Sheriff Madison County.

STATE OF ALABAMA,
Jackson County:

THE STATE OF ALABAMA, TO THE USE OF JACKSON County, plaintiff,
vs.
THE MEMPHIS AND CHARLESTON RAILROAD COMPANY, defendant, William R. Larkin, Johnson T. Martin, John Snodgrass, James White, Samuel R. Cruse, J. R. Woodall, G. G. Lilly, John A. Grant, and John Bradley, garnishees.

Petition for the removal of the circuit court of the United States, northern district of Alabama.

To said State court:

15 Your petitioner, the Memphis and Charleston Railroad Company, shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceed, exclusive of cost, the sum of five hundred dollars; that the controversy in said suit is between citizens of different States, and that the petitioner was, at the time of the commencement of this suit, and still is, a citizen of the State of Tennessee, and that the said plaintiff was, and still is, a citizen of the State of Alabama, said garnishees are all citizens of the State of Alabama, except Samuel R. Cruse, John A. Grant, and John Bradley, who are citizens of the State of Tennessee, that said plaintiff is the sole and only plaintiff to the said suit, and petitioner the sole and only defendant thereto; and your petitioner offers herewith a bond with good and sufficient security for its entering said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

16 And it prays this honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said security and bond, and to cause the record herein to be removed into said court of the United States in and for the northern district of Alabama, and it will ever pray.

HUMES AND GORDON.
Attorneys for Petitioner.

STATE OF ALABAMA,
Madison County:

Personally appeared before me, Wm. Richardson, judge of probate,

James B. White, who is personally known to me, and who states on oath that he is the duly authorized, constituted, and appointed law agent of the Memphis and Charleston Railroad Company; that he has read the foregoing petition and knows the contents thereof, and that the statements made and allegations therein contained are true, as he verily believes.

JAMES B. WHITE.

Sworn to and subscribed before me this October 25, 1879.

WM. RICHARDSON,
Judge Probate.

Know all men by these presents that I, The Memphis and Charleston Railroad Company as principal, and Wm. J. Windham and Addison White as sureties, are held and firmly bound unto the State
17 of Alabama, to the use of Jackson County, in the penal sum of five hundred dollars, the payment whereof well and truly to be made unto the State of Alabama to the use of Jackson County, we bind ourselves, our heirs, representatives, assig's, jointly, severally, and firmly by these present', yet upon these conditions: The said Memphis and Charleston Railroad Company, having petitioned the circuit court of Jackson County, State of Alabama, for a removal of a certain cause therein pending, wherein the State of Alabama, to the use of Jackson County, is plaintiff, and the Memphis and Charleston Railroad Company is defendant, to the circuit court of the United States in and for the northern district of Alabama.

Now, if the said Memphis and Charleston Railroad Company, your petitioner, shall enter in the said circuit court of the United States on the first day of the next session, a copy of the record of the said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully removed thereto, then this obligation to be void; other-
18 wise in full force and virtue.

Witness our hand and seals this 25th Oct., 1879.

W. J. WINDHAM.
ADDISON WHITE.

STATE OF ALABAMA,
Madison County:

Personally appeared before me Wm. Richardson, judge probate, Addison White, and William Windham, who, being sworn, deposes and says that he is a resident citizen of the State of Alabama, and a property holder therein; that he is worth the sum of five hundred dollars over and above all of his debts and liabilities, exclusive of property by law exempt from execution; that he has property in the State of Alabama liable to execution of the value of more than five hundred dollars.

WM. WINDHAM.
ADDISON WHITE.

Sworn and subscribed before me this 25th day of October, 1879.

WILLIAM RICHARDSON,
Judge Probate.

Filed Oct. 28, 1879. J. H. Gregory, clerk C. C.

19 THE STATE OF ALABAMA,
Jackson County:

I, J. H. Gregory, clerk of the circuit court in and for said county, do hereby certify the foregoing pages contains a complete transcript of the record and proceeding in the circuit court of Jackson County, Alabama, in the cause therein pending, wherein the State of Alabama, for the use of Jackson County, is plaintiff, and the Memphis and Charleston Railway Company is defendant.

Witness my hand and seal of office this 29th of October, 1879.

J. H. GREGORY,
Clerk Ct. Ct.

(Endorsed:) Number 1172. State of Alabama, for the use of Jackson County, plaintiff, vs. M. & C. R. R. Co., defendant. S. R. Cruse et al., garnishees. Filed in the clerk's office Oct. 29th, 1879. A. W. McCullough, clerk. Transcript from Jackson circuit court.

20 In the circuit court of the United States, northern district of Alabama.

THE STATE OF ALABAMA, TO THE USE OF Jackson County, plaintiff,
vs.
THE MEMPHIS AND CHARLESTON RAILROAD Company, defendant; William R. Larkin, Johnson F. Martin, John Snodgrass, James White, Samuel R. Cruse, J. R. Woodall, G. G. Lilly, John A. Grant, and John Bradley, garnishees.

Comes the plaintiff into the circuit court of the United States for the northern district of Alabama, and for answer to petition of the Memphis and Charleston Railroad Company, defendant, &c., for the removal of this cause from the circuit court of Jackson County, Alabama, into this honorable court, says that this court ought not to have or take further cognizance of this cause or the action aforesaid, because it says that the said causes of action, and each of them, accrued to this plaintiff out of the jurisdiction of this court, that is to say, in the circuit court for the county of Jackson, in the State of Alabama, and not in the circuit court of the United States for the northern district of Alabama or elsewhere within the jurisdiction of this court that the misstatement of the facts in the peti-
21 tion of the Memphis and Charleston Railroad Company of its now citizenship of the State of Alabama, and that it is the sole and only party defendant to this controversy, &c., cannot invest this court with jurisdiction of this cause by reason of the facts of this case, as is apparent from the whole record thereof.

The said garnishees defendant are material and necessary parties defendant to plaintiff' action. Plaintiff had at the commencement of this suit and still has a cause of action against the said garnishees defendant by virtue of section 416, chapter 2, part 1, title 7, article 6 of the code of laws of the State of Alabama, 1876; and by reason of the personal services effected upon said garnishees, the said circuit court for the county of Jackson, Alabama, obtained jurisdiction of the said cause against said garnishees, and

by and through said service of the Memphis & Charleston Railroad Company defendant, &c. The allegation of the citizenship of the petitioning defendant, as *if* the State of Tennessee, is true in part, but it is not the whole truth. The said Memphis & Charleston Railroad Company was incorporated by the name by which it is garnisheed, in the State of Tennesse, by act of the legislature date of 2nd February, 1846, and by an amendatory
22 act of the legislature of said State of date 4th February, 1848, and was likewise incorporated in Alabama by act No. 128 of the legislature of Alabama, approved January 7th, 1850, likewise under act 129 of the legislature of said State, approved the 12th day of February, 1850, under and by which said enactment of the legislature of the State of Alabama (with other enactments), certain grants of rights of way over the territory of Alabama, certain jurisdiction and privileges, were allowed said corporation, and certain disabilities and restrictions were imposed, all of which were by said corporation accepted, among which were the rights to sue and be sued by its corporate name in the courts of the State of Alabama in the same manner as in the State of Tennessee, with the further provision, that is, "a liability to have such tax levied on its property and collected from it in the State of Alabama as should be by the general assembly assessed on the property of other railroad companies in the State of Alabama."

Wherefore by reason of the facts of this case, the said Memphis and Charleston Railroad Company was incorporated in the State of Alabama at the time aforesaid and had at the time of the commencement of
23 this suit and still has within the said State of Alabama a legal corporate existence by the name by which it is garnisheed, and hath a standing to sue or be sued in the courts of Alabama, and is in legal contemplation, by virtue of said facts, a resident citizen of the State of Alabama, and amenable to the process of the courts of said State, and this plaintiff is ready to verify by the whole record of this case, on an inspection thereof by the court, and as to the other facts therein stated, plaintiff is ready to verify the same in such manner, at such time and place as the court may direct, whereby it will appear that the allegations of said petition as to the citizenship of the said Memphis & Charleston Railroad Company is evasive and untrue in fact and law.

Wherefore, the plaintiff prays judgment whether this court can or will take further or other cognizance of the petition or case made by the petition or action aforesaid of the said Memphis and Charleston Railroad Company.

JAMES M. GULLATT,
Tax Collector Jackson County, Alabama,
By ROBINSON & BROWN,
Attorneys.

24 STATE OF ALABAMA,
Jackson County:

Before me, Joseph H. Gregory, clerk of the circuit court for said county and State, came James M. Gullatt, tax collector for said county, who makes oath that the facts stated in the foregoing pleading of the plaintiff in the case of the State of Alabama, to the use of Jackson County, versus The Memphis and Charleston Railroad Company, William R. Larkin and others, garnishees, wherein it is stated as of record, he believes to be

true, and as to these matters not appearing of record and stated as facts, are true in substance and fact.

JAMES M. GULLATT,
Tax Collector.

Sworn to and subscribed before me November 3, 1879.
J. H. GREGORY, *Clk C. C.*

(Endorsed:) Number 1172. The State of Alabama, use Jackson County, vs. The Memphis & Charleston Railroad Company. W. R. Larkin et al. garnishees. Filed in open court Nov. 4, 1879. A. W. McCullough, clerk.

25 In the circuit court of the United States for the northern district of Alabama.

THE MEMPHIS & CHARLESTON RAILROAD CO., appellant,
vs.
THE STATE OF ALABAMA, FOR THE USE OF Jackson County, appellee.

Be it remembered that this cause came on to be heard upon the motion made by the plaintiff therein, the State of Alabama, for the use of Jackson County, which motion is as follows, to wit:

In the circuit court of the United States for the northern district Alabama.

THE STATE OF ALABAMA TO THE USE OF Jackson County, plaintiff,
vs.
THE MEMPHIS & CHARLESTON RAILROAD CO., defendant, William R. Larkin et al., garnishees.

In this cause a petition has been filed to remove this cause from the circuit court of Jackson County, Alabama, into the circuit court of the United States, and now comes the plaintiff, by attorney, and moves the court to dismiss the cause and remand the same to the State court, where it was instituted, upon the following grounds:

26 1st. Because the circuit court of the United States has no jurisdiction of the said cause on the facts of this case, as shown by the whole record.

2nd. Because the circuit court of the United States has no jurisdiction of this cause on the facts of this case as set forth in the sworn answer of the plaintiff to the petition of defendant, this day filed in this court in the form and nature of a plea in abatement to the jurisdiction of this court.

3. The said suit is, in legal contemplation, a suit between citizens of the same State. It is a controversy between plaintiff, who is a citizen of Alabama, and the Memphis and Charleston Railroad Company, a corporation created by and having a corporate existence in the State of Alabama under

the laws of said State, and hence it is a controversy in the purview of the law between citizens of the same State; that is to say, of the State of Alabama.

November 4th, 1879.

ROBINSON & BROWN,
Att'ys for Plaintiff.

To Messrs. HUMES & GORDON.

Service acknowledged.

HUMES & GORDON,
Att'ys for Defendant.

27 The following evidence was introduced upon the trial of said motion, and was relied upon by both parties, it being admitted that said proof was in all respects regularly and legally made, the defendant insisting that under said proof it was shown to be a citizen of the State of Tennessee, and the plaintiff insisting that thereunder the defendant was shown to be a citizen of the State of Alabama. Said proof was as follows:

28 An act to incorporate the Memphis and Charleston Railroad Company.

SECTION 1. Be it enacted by the general assembly of the State of Tennessee, That for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina, the formation of a company is hereby authorized, which, when formed, shall be a body corporate by the name and style of the "Memphis and Charleston Railroad Company," and by said *said* corporate name shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate, as hereinafter provided, make contracts, sue and be sued, to make by-laws, and to do all lawful acts properly incident to a corporation and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and shall have perpetual succession of members.

SEC. 2. Books for subscription of eight hundred thousand dollars, the capital stock of *of* said company, in shares of twenty-five dollars each, shall be opened on the first Monday in March, 1846, and shall be kept open for six days, between the hours of ten o'clock in the morning and four o'clock in the evening of each of these days, at the following places and by the following commissioners, to wit: At Memphis, by Robert C. Brinkley, Lewis Shanks, Robertson Topp, E. J. Shields, John K. Chester, Edwin Hickman, W. W. Hart, Wyatt Christian, G. Gholson, H. H. Means, P. G. Gaines, Mat. Anderson, Reuben L. Kay, Charles
29 Lofland, Seth Wheatley, Henry G. Smith, M. B. Winchester, Wardlow Howard, George W. Smith, Dr. Dudley Dunn, James F. Leath, John Delafield; at La Grange, by John J. Potts, Thomas B. Firth, John W. Burton, E. W. Harris, C. Michie, and Thomas Polk; at Somerville, by B. Douglass, Levin H. Coe, Robt. J. Yancey, and Lewis P. Williamson; at Boliver, by Pitser Miller, William O. Fergerson, J. J. Williams, Horace Polk, John H. Bills, C. H. Horion, Calvin Jones, and C. P. Polk; at Purdy, by W. J. Wisdom, James Reed, Alfred Moore, B. B. Adams, P. P. Braden, W. C. Kendall; at Savannah, by James

Erwin, L. H. Broyles, David Robinson, E. H. Shelton, and A. M. Hardin; at Palmyra (Gibb's Landing), by Lewis H. Wells, A. H. Kendall, and Isham P. Gibbs.

SEC. 3. The said commissioners, or a majority of them, at each of the places aforesaid shall receive subscriptions for stock in the said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents.

SEC. 4. As soon as the time for receiving subscriptions as aforesaid shall have expired, the said commissioners shall respectively deposit all the money so received by them in some incorporated bank redeeming its notes in specie, to the credit of the Memphis and Charleston *on* Railroad Company, and subject to the order of the president of the board of commissioners hereinafter appointed, and shall also forward a correct list of all the subscribers to said stock, with the number of shares each subscriber has taken, to a board of commissioners, to be composed of the fol-
30 lowing persons: Leroy Pope, E. W. M. King, Austin Millen, Walter B. Morris, W. S. Wisdom, Silas Beech, William Armour, and John Delafield, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at Memphis on the first Monday in May next, ascertain the whole number of shares taken in said company, and publish the same in some newspaper printed in Memphis on or before the first Monday in May next; and if the sum of four hundred thousand shares have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Memphis and Charleston Railroad (company) shall be regarded as formed, and thenceforth and from the day of the closing of the books of the subscription as aforesaid the said subscribers to the stock shall form a body politic and corporate, in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid until the election of a board of directors, as hereinafter prescribed.

SEC. 5. If, on closing the books aforesaid, the sum of four hundred thousand dollars shall not have been subscribed, then and in that case the said board of commissioners, by themselves or their agents, may receive subscriptions till the said sum be taken, and whenever that sum shall be subscribed the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given
31 as hereinbefore directed, and may proceed to survey the route for the road, and make an estimate of the cost of its construction; and the said board of commissioners may, by themselves or their agents, at such times and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the said sum shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid: provided, the same shall be done on or before the first day of January, 1849; and for the residue of the original sum the said corporation, when organized, may in like manner receive additional subscriptions.

SEC. 6. In case more than eight hundred thousand dollars shall have

been subscribed on closing the books when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of number, as far as can be done; and after such reduction the holders of the remaining shares shall form the company, and be interested therein in proportion to the number of shares which they may then respectively hold.

Return of subscriptions.

SEC. 7. If, on closing the books on the first day of January, 1849, said sum shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said board of commissioners,
32 after defraying the expenses of opening the books, and of making a survey and map of the route and estimate of the costs of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

SEC. 8. The affairs of said company shall be managed by a board of directors, to consist of nine, five of whom shall constitute a quorum, and who shall be chosen by the stockholders from their own body; and a president of the company shall be elected by the directors from among their own member' in such manner as the regulations of the corporation shall prescribe.

SEC. 9. As soon as the said sum shall have been subscribed it shall be the duty of the commissioners appointed to declare the same to appoint a time for the stockholders to meet in Memphis, and give notice thereof by publication in some newspaper in Memphis and Somerville, at which time the said stockholders in person or by proxy shall proceed to elect the directors of the company and to enact all such regulations, rules, and by-laws as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct; and at this meeting the stockholders shall fix on the day and place or places when the subsequent elections of directors shall be
33 held, and such elections shall thenceforth be annually made; but if the day of annual elections should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful as any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation.

SEC. 10. The board of directors may fill all vacancies which may occur in it during the period for which their board shall have been elected, and in the absence of the president may fill his place by electing a president pro tempore.

SEC. 11. All contracts and agreements authenticated by the president of the board shall be binding on the company without seal; or such other mode of authentication may be used as the company by their by-laws may adopt.

SEC. 12. The board of directors shall not exceed in their contracts the amount of the capital of the corporation and of the funds which the company may have borrowed and placed at the disposal of the board; and in case they should do so, the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made, shall be jointly and severally liable for the excess, both to the contractor or contractors and the corporation. Provided, that

any one may discharge himself from such liability by voting against
34 such contract or contracts and causing such vote to be recorded on the minutes of the board and giving notice thereof to the next general meeting of the stockholders.

No road to run laterally with this.

SEC. 13. After the route of said railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the secretary of state, it shall not be lawful for any other railroad to be built, cut, or constructed in any way or manner, or by any authority whatsoever, running latterly within twenty miles of the route so adopted; unless by said company or with the consent of the board of directors for the time being.

Exclusive rights.

SEC. 14. The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandize, and produce over the said railroad by them to be constructed; provided, that the charge of transportation and conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles; and five cents a mile for every passenger; and provided, also, that the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

Instalments.

SEC. 15. The board of directors may call for the payment of twenty-four and a half dollars on each share of stock, in sums not exceeding two dollars, in every thirty days; provided, that twenty days' notice be given of such, in at least one public newspaper of the State in which any
35 of the stockholders may reside; and a failure to pay, or secure to be paid according to the rules of the company, any of the installments so called, as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and all payment thereon; and the same shall invest in and belong to the company, and may be restored to the owner or owners by the board of directors if they deem proper, on the payment of all arrears on such shares and legal interest thereon; or the directors may waive the forfeiture after thirty days' default and sue the stockholders for the install'ents due, at their descretion.

Transfer.

SEC. 16. The stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation.

Increase of capital.

SEC. 17. The said company may at any time increase its capital to a sum sufficient to complete the said road and stock it with everything necessary

to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any State or any citizen, corporation or company, of this or any other State or country, may subscribe for and hold stock in said company, with all the rights and subject all the liabilities of any other stockholder.

Report of directors.

SEC. 18. The board of directors shall once in every year at least, 36 make a full report on the state of the company and its affairs, to a general meeting of the stockholders, and oftener if directed by a by-law; and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

Eligibility.

SEC. 19. No person but a citizen of the United States, and being a bona fide stockholder in his own right, which he shall held at least three months previous to his election (except at the first election), shall be president or director of the company; nor shall any stockholder vote in person or by proxy at any general or other election (except the first), who shall not have held in his own right the share or shares on which he offers to vote, at least three months previous to such election.

Proxy.

SEC. 20. Stockholders may vote in person or by proxy, and in the election of directors and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the owner of one or more shares shall be entitled to one vote for each and every share he, she, or they may own, as aforesaid.

Property of company.

SEC. 21. The said company may purchase, have, and hold in fee, or for a term of years, any lands, tenements, or hereditaments, which may be necessary for said road or appurtenances thereof; or for the erection of depositories, store-houses, houses for the officers, servants, or agents of the company; or for work-shops or foundaries, to be used for said com- 37 pany; or for procuring timber, stones, or other materials necessary for the construction of the road, or the appurtenances, or for effecting transportation thereon.

Obstructions of roads, &c.

SEC. 22. The said company shall have the right, when necessary, to construct the said road or any branch thereof, across or along any public road or water-course: Provided, That the said road and the navigation

of such water-course shall not thereby be obstructed: And, provided further, That such railroad shall not be located so near any turnpike road as to injure or prejudice the interest of the stockholders in such turnpike road, except upon such terms as may be agreed upon by the president and directors of the same on behalf of the stockholders.

Purchase bridge or road.

SEC. 23. The said company may purchase, have, and hold any bridge or turnp'ke road over which it may be necessary to carry the said railroad, and when such purchase is made, to hold the said bridge or turnpike road on the same terms and with all the rights which belong to the individual, individuals, or corporation from which such purchase may be made: Provided, That the said company shall not obstruct any public road without constructing another as convenient as may be.

Right of way.

SEC. 24. When any lands or right of way may be required by said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from other cause the same cannot be purchased from the owner or owners, the same may be taken at a valuation
38 to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners before they act shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken, or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the said road or works, and shall state particularly the nature and amount of each; and the excess of loss and damage over and above the benefit and advantage, shall the commission issue*d*, there to remain on record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term or as soon as practicable, and their verdict shall be final and conclusive between the parties unless a ne*y* trial shall be granted; and the lands or right of way so valued by the commissioners or jury shall vest in the said company in fee simple so soon as the valuation may be paid or when refusal may be tendered. When there may be an appeal, as aforesaid, from the valuation of commissioners by either of the parties, the same shall not prevent the works intended to be constructed from proceeding, but where the appeal is made by the company requiring the surrender they
39 shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond with good security, to be approved of by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained; and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and con-

firmed by the court: Provided, That when the land cannot be had by gift or purchase the operations of the work are not to be hindered or delayed during the pende'cy of any proceeding to assess its value as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

Absence of contract.

SEC. 25. In the absence of any contract with the company in relation to the lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the centre of said road has been granted to the company, shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her, or them shall apply for an assessment for the value
40 of the said land as hereinbefore directed within five years next after that part of said road was finished; and in case the said owner or owners, or those claiming under him, her, or them shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering the said land or having assessment or compensation therefor: Provided, Nothing herein contained shall effect the right of femes covert or infants, until two years after the removal of their respective disabilities.

Forfeiture of intrusion on road.

SEC. 26. I' any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, of the rights and privileges connected therewith without the permission or contrary to the will of said company, all the vehicles that may be so intruded on said road, and the same may be recovered by suit at law; and the person or persons so intruding may also be indicted for misdemeanor, and upon conviction, fined and imprisoned by any court of competent jurisdiction.

Punishment for damaging road.

SEC. 27. If any person shall willfully and maliciously destroy, or in any manner hurt, damage, or obstruct the said railroad, or any bridge or vehicle used for or in the transportation therein, such person or persons so offending shall be liable to be indicted therefor, and on conviction shall be imprisoned not more than six nor less than one month, and pay a fine of not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same; and it shall not be competent for any
41 person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent, or servant of the owner of the land where such destruction, hurt, damage, injury, or obstruction was done or caused, at the time the same was caused or done.

Nuisance.

SEC. 28. Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent, or servant of the company; and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

Rates of storage.

SEC. 29. The said company shall have the right to take at the storehouse they may establish or annex to their road, all goods, wares, merchandise, and produce intended for transportation; prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation: Provided, That the said company shall not charge or receive storage on goods, wares, merchandize, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

Dividends.

SEC. 30. The profits of the company, or so much thereof as the
42 board of directors may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders, in proportion to the stock each may hold.

Banking and insurance.

SEC. 31. The said company is hereby expressly prohibited from carrying on any banking operations; but may effect insurance on lives and property transported on the road.

Obstructions of roads.

SEC. 32. Whenever in the construction of said road it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road, from one part of his land to the other.

Powers.

SEC. 33. The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

Amendment of charter.

SEC. 34. This charter shall be amendable from time to time by the legislature, whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amend-
43 ments, and when such amendments shall be adopted by the legislature and submitted to the directory, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise.

Exemption of officers.

SEC. 35. The president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in case of invasion and insurrection, and shall also be exempt from serving on juries and working on public roads.

Purchase of slaves.

SEC. 36. The company shall have full power and authority to purchase and own such number of slaves as may be necessary for the construction of the said road, and for keeping the same in repair.

Dissolution.

SEC. 37. If by decree, or otherwise, the said corporation shall be dissolved, the president and directors of said company are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

Exemption from taxation.

SEC. 38. The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be ex-
44 empt from taxation for the period of twenty years from the completion of the road, and no longer.

SEC. 39. The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within six years thereafter; otherwise the charter hereby granted shall be void.

Branch roads.

SEC. 40. Any individual or individuals, company or body corporate, with the permission of the legislature of this State, may hereafter construct branches to unite with the said Memphis and Charleston Railroad; and it shall be the duty of said company, when required, to receive on their road the full-loaded freight cars from such branches and transport the same to their destination and to return them, without changing the loads thereof, or charging for transportation of the goods, wares, mer-

chandise, and produce therein any greater rate of freight that they charge for similar goods, wares, merchandise, and produce in their own cars: Provided, That the company shall not be compelled to receive such cars on their road unless they are constructed in the same manner and are of equal strength with their own cars, of which the engineer of the main road shall be the judge: And provided, That the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles transportation: And provided also, That the said company shall be entitled in all respects to similar and equal
45 privileges on any branches constructed to unite with their road, subject to the same restraints.

Route.

SEC. 41. Be it enacted, That said railroad shall commence at or near where Union street crosses the La Grange and Memphis Railroad, in the town of Memphis, the place where the depot of said La Grange and Memphis Railroad is now situated; thence running in an easterly direction to such point on the southern boundary line of the State of Tennessee, or such point on the Tennessee River, in said State, *and* the said Memphis and Charleston Railroad Company, when organized, may determine to be the most favorable route to form a continuous railway communication, or railway and water communication, from the city of Memphis to the city of Charleston: Provided, That the company hereby incorporated shall not locate their road on the track of the Memphis and La Grange Railroad without first procuring the consent of the Memphis and La Grange Railroad Company on such terms as the companies may agree upon: And provided, The said Memphis and Charleston Railroad Company shall first pay or secure to be paid such sum of money for the interest of the State in the track of the Memphis and La Grange Railroad, as may be agreed upon by the board of internal improvement, whereupon the said board shall have power, and are hereby authorized, to convey such interest to the Memphis and Charleston Railroad Company, which
46, 47 transfer shall be made under the advice of the attorney-general of the State: Provided, That nothing herein contained shall be so construed as to fix the point at which said road shall commence or terminate at said city of Memphis: Provided, That nothing herein contained shall be so construed as to authorize the company herein incorporated to lay off and construct the road mentioned in this charter until such company shall have first purchased of the State the interest which she owns in the Memphis and La Grange Railroad Company: And provided further, That said commissioners, under the sanction of the attorney-general of the State, shall have power to take stock in said company to the amount of the interest of the State, or require the payment to be made in money, as they in their discretion may think will best promote the interest of the State.

BROOKINS CAMPBELL,
Speaker of the House of Representatives.
H. M. WATTERSON,
Speaker of the Senate.

Passed February 2, 1846.
A true copy. Test.

48 An act to amend the charter of the Memphis and Charleston Railroad Company.

Be it enacted by the general assembly of the State of Tennessee, That the charter of the Memphis and Charleston Railroad Company be so amended
Increase of directors. that the number of directors in said company be increased from nine to eleven or thirteen, whenever the board of directors shall in their judgment deem it advisable.

JORDON STOKES,
Speaker of the House of Representatives.
M. R. HILE,
Speaker of the Senate.

Passed February 25th, 1852.

A similar act to the above was passed by the legislature of Alabama and Mississippi.

A true copy. Test.

An act to incorporate the Memphis and Charleston Railroad Company.

Whereas an act was passed by the State of Tennessee, bearing date the 2nd day of February, 1846, and the same was amended by an act of the same State, dated February 4th, 1848, for the formation of a company, under the name and style of the "Memphis and Charleston Railroad Company," for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina; and whereas it is believed that the most eligible route for said road is through a portion of this State; and whereas it is also believed that great and lasting benefits will accrue to the inhabitants of this State from said improve-
49 ment: Therefore—

Right of way.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama, in general assembly convened, That the said company shall have the right of way through the territory of this State to construct their road along the valley of the Tennessee River to the town of Huntsville, and thense to some point on the Nashville and Chattanooga Railroad, or to some point on the Georgia, or other railroad leading eastwardly, so as to communicate with Charleston and other Atlantic ports, and that said company shall have the right of way over the bed or bank of the Muscle Shoals Canal, provided it can be found necessary in the construction of said road, and shall also have the right of way through any lands belonging to the State of Alabama, or to the Bank of the State of Alabama, or to any branch Bank of said State, together with the right to use any stone, timber, or other materials on said lands necessary in the construction of said road, and said company shall have and enjoy all the rights, powers, and privileges granted to them by the act of incorporation above mentioned, and shall be subject to all the liabilities and restrictions imposed by the same, together with the following requirements.

Branch road.

50 SEC. 2. And be it further enacted, That in the event said road shall be located through Tuscumbia, it shall be the duty of the company to construct a branch to Florence; and in the event said road shall pass on the north side of the Tennessee River, near Florence, it shall be the duty of said company to construct a branch to Tuscumbia: Provided, That the subscription in the town or county applying for such branch shall be fully sufficient to pay the costs of the same.

Stock.

SEC. 3. And be it further enacted, That the said company shall be authorized and required to open books for the subscription of stock in the capital stock of said corporation in the State of Alabama, so as to afford the citizens thereof an opportunity to take stock to the amount of fifteen hundred thousand dollars of the capital of said company: Provided, That if said fifteen hundred thousand dollars be not subscribed in Alabama, within ninety days after the books are opened, then it may be taken elsewhere.

Election of directors.

SEC. 4. And be it further enacted, That the said company shall at the first meeting of the stockholders, designate a time when, and place or places, in North Alabama, where, for the convenience of the citizens of the State who may be stockholders, the subsequent elections for directors shall be held, and give notice thereof in one or more newspapers
51 published in North Alabama; and said elections shall be held at the same time, both in this State and in Tennessee.

SEC. 5. And be it further enacted, That the moneys subscribed by the citizens of Alabama, whether by the State, counties, corporations, or individuals, shall first be applied to the construction of the road within the limits of the State of Alabama, and said moneys shall be placed in some safe depository in North Alabama, until required for use: Provided, That nothing in this section shall be so construed as to prevent the company from putting under contract the whole road, whenever, in their estimation, a sufficient amount of funds shall have been obtained.

Tolls.

SEC. 6. And be it further enacted, That said company shall not charge for the transportation of persons or property any higher rates on one part than on another of said road; but the toll shall be equal and uniform on every part of said road for articles of the same description, whether passing in the one direction or the other.

SEC. 7. And be it further enacted, That the company hereby incorporated shall not locate their road on the track of the Tennessee Valley Railroad, nor of any other railroad which has *has* heretofore been
52 chartered by the State: Provided, Companies have been organized under the same, without first procuring the assent by agreement with said companies; but it shall be lawful for the company hereby incorporated to acquire by purchase, gift, release, or otherwise, from any other

company, all the rights, privileges, and immunities of said company, and possess and enjoy the same as fully as they were or could be possessed or enjoyed by the company making the transfer.

SEC. 8. And be it further enacted, That any railroad company now chartered or hereafter to be chartered in this State, shall have the right to connect their road with the road authorized by this act.

Right of State to levy and collect taxes.

SEC. 9. And be it further enacted, That nothing contained in this act shall prevent the State of Alabama from levying and collecting such taxes on the property of said company within this State as shall by the general assembly of the State be assessed on the property of other railroads in this State, nor shall anything therein be construed so as to prevent the chartering and building of other railroads in the State coming within any distance whatever of said road, anything in the said law of Tennessee to the contrary notwithstanding.

L. P. WALKER,
Speaker of the House of Representatives.
D. DENT,
53 *President of the Senate.*

Approved 7th January, 1850.

H. W. COLLIER.

A true copy. Test.

An act to amend an act entitled "An act to incorporate the Memphis and Charleston Railroad Company," approved January 7th, 1850.

Powers and privileges.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened, That the subscribers to the capital stock of the Memphis and Charleston Railroad, in the State of Alabama, from the failure to obtain the necessary legislation from the State' of Tennessee and Mississippi, or from any other cause, deem it expedient to form a separate and independent organization, then and in that event they are hereby vested with full power and authority to do the same, and said company so organized shall be known by the name and style of the Mississippi and Atlantic Railroad Company, and shall have and enjoy all the rights, privileges, and powers heretofore granted or intended to be granted, and be subject to all the limitations, restrictions, and liabilities heretofore imposed or intended to be imposed in the several acts incorporating the Memphis and Charleston Railroad Company.

54 Commissioners.—Authority of same.

SEC. 2. And be it further enacted, That in order to enable said subscribers to perfect the organization contemplated in the foregoing section, Samuel Cruse, Francis J. Levert, John W. Otey, Richard W. Vasser, Jessie W. Garth, Edgar Swoope, E. D. Towns, and James A. Weakley,

be, and they are hereby, appointed commissioners in the place and stead of Leroy Pope and others, named and appointed by the original act approved February 2nd, 1846, with full power and authority to do perform all the duties which were required of or authorized to be done by said commissioners in said original act of incorporation.

SEC. 3. And be it further enacted, That should an organization take place under the provisions of this act, said company are hereby authorized and empowered to form a connection, by consolidation or otherwise, with any companies which have been or may be formed under the authority of either the legislature of the State of Tennessee or Mississippi, and to select for the western termination of said road any point within the limits of the State of Tennessee or Mississippi.

SEC. 4. And be it further enacted, That should the sum of fiveteen hundred thousand dollars, heretofore authorized to be raised, be insufficient for the construction of said road within the limits of the State of Alabama, said commissioners may, and they are hereby authorized and
55 empowered to, increase their capital stock to any amount not exceeding the sum of twenty-five thousand dollars.

L. P. WALKER,
Speaker of the House of Representatives.
D. DENT,
President of the Senate.

Approved 12th February, 1850.

H. W. COLLIER.

A true copy. Test.

An act to amend "An act to incorporate the Memphis and Charleston Railroad Company," approved January 7th, 1850.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened, That the board of directors of the Memphis and Charleston Railroad Company, heretofore consisting of nine members, shall, from and after the next annual election by the stockholders, or at such time after the passage of this act as the company may desire, be increased to the number of thirteen members, a majority of whom shall constitute a board to transact business, whose acts shall in every respect be as valid and binding as those of the board heretofore composed of nine members.

SEC. 2. Be it further enacted, That whenever it shall appear for the interest of the company, the president and directors of said com-
56 pany shall have full power to put under contract and project the branch of said railroad from the main trunk, at or near Tuscumbia, by the way of South Florence to the town of Florence, any provisions to the contrary notwithstanding.

JOHN D. RATHER,
Speaker of the House of Representatives.
CHARLES McLEMORE,
President of the Senate.

Approved February 6th, 1852.

H. W. COLLIER.

A true copy. Test.

An act to authorize the Memphis and Charleston Railroad Company to sell their company bonds at, above, or below par; extending to the Chattanooga and Central Kentucky Railroad Company further time to commence their road, and for other purpose'.

May issue and sell bonds.

SECTION 1. Be it enacted by the general assembly of the State of Tennessee, That the Memphis and Charleston Railroad Company are hereby authorized to issue their company bonds, mortgaging their road, works, property, and franchises of every nature, to secure the payment of the same, together with the interest; to fix the rate of interest, not exceeding seven per cent. per annum; fix the place and time of payment for said bonds; to
57 sell the same either in the United States or elsewhere, at, above, or below their face or par value, and no plea of usury or abatement shall be set up by said company on account of the rate of interest fixed in the face of said bond, or on account of the price at which it is sold, whether it be below par or not, or on account of the place of payment or place of sale.

State lien not to be impaired.

SEC. 2. Be it enacted, That nothing herein shall be in any manner so construed as to authorize said company to mortgage their road to affect the liens of the State of Tennessee in any manner whatever for bonds issued, or to be issued, or endorsed under the provisions of the internal improvement laws of this State passed 11th February, 1852, and the amendments thereto.

Amount of bonds.

SEC. 3. Be it further enacted, That said company is hereby authorized to issue and sell bonds under the provisions of this act to the amount of one million six hundred thousand dollars, the proceeds to be applied to the construction and equipment of their road.

Use of bridge aid.

SEC. 4. Be it further enacted, That in the event the bridge to be built by said company across Big Hatchie River, in West Tennessee, to which the State's aid is granted under the amendment to the internal
58 improvement act, passed 8th February, 1854, shall cost less than one hundred thousand dollars, as provided for in said act, said company shall have a right to use the excess or surplus of said sum in constructing a bridge across the Tuscumbia and Cypress Forks of said river, near the line between Hardeman and McNairy Counties, in West Tennessee, under the same *unless* and restrictions provided for in said act.

Chattanooga Central Kentucky Railroad Company further time.

SEC. 5. Be it further enacted, That the Chattanooga and Central Ken-

tucky Railroad Company be allowed the further time of four years from the passage of this act within which to commence their road.

NEIL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed January 29, 1856.
A true copy. Test.

MEMPHIS AND CHARLESTON RAILROAD.

An act to be entitled "An act to grant the right of way to the Memphis and Charleston Railroad Company, and for other purposes."

Whereas an act was passed by the legislature of the State of Tennessee, bearing date the 2nd day of February, 1846, entitled "An act to incorporate the Memphis and Charleston Railroad Company," which was amended by an act of the same State, dated February 4th, 1848, and the object of which was to establish a communication by railroad between Memphis, in the State of Tennessee, and Charleston, in the State of South Carolina; and whereas it is believed that the most eligible route for said
59 road is through a portion of this State, and that great and lasting benefits will accrue to the people of this State from the building of said road, which it is desirous they should enjoy: Therefore,

Right of way.

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That the said company should have the unrestricted right of way to construct their road through the territory of the State, entering the State at any point on the northern boundary, and passing out of it at any point they may desire on the eastern boundary thereof, so as to form a connection between Memphis, in the State of Tennessee, and Charleston, South Carolina, or other Atlantic ports; and said company shall have and enjoy all the rights, powers, and privileges granted to them by the acts of incorporation above mentioned, and shall be subject to all the liabilities and restrictions imposed by the same, together with the following requirements:

SEC. 2. Be it further enacted, That the monies subscribed by the citizens of this State, whether by the State, counties, corporations, or individuals, shall first be applied to the construction of said road within the limits of this State: Provided, That nothing in this section shall be so construed as to prevent the said company from putting under contract the whole road whenever, in their opinion, a sufficient amount of funds therefor shall have been obtained.

Tools.

SEC. 3. Be it further enacted, That the said company shall not
60 charge for the transportation of persons or property any higher rates ove' one part than another of said road; but the toll shall be equal and uniform on every part of said road, whether passing in one direction or the other; and the said Memphis and Charleston Railroad Company shall transport the United States mail upon the route of their

road upon such terms and restrictions as may be prescribed by the Postmaster-General, in pursuance of the acts of Congress, at the same rate of compensation that may be allowed for a similar grade of mail service.

Valuation of property.

SEC. 4. Be it further enacted, That when any lands or right of way may be required by said company for the purpose of constructing their road, and for want of agreement as to the value thereon, or other causes, the same cannot be purchased from the owner or owners, the same may be taken at a valuation, to be made by five commissioners, or a majority of them, to be appointed by the police court of the county wherein said lands or right of way is situated, in whole or in part; and said commissioners, before they act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duties assigned them. The proceedings of said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of said commissioners to the court from which said commissioners issued, there to remain of record; and in case either *prop-*
61 *erty* to the proceedings shall be dissatisfied with the valuation of said commissioners, they shall have the right of appeal to the circuit court of the county in which said land or right of way is situated, and shall give a reasonable notice of said appeal to the opposit' party; in which event the said court shall order a new valuation to be made by a jury, who shall be charged therewith at the appeal term thereof, or as soon thereafter as practi'ble; and the verdict of said jury shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way so valued shall vest in said company so soon as the valuation may be paid, or tendered and refused. When there may be an appeal as aforesaid from the valuation of commissioners by either of the parties, the same shall not prevent the work intended to be constructed from proceeding; but when the appeal is by the company required the surrender, they shall be at liberty to proceed with their work only on condition of giving to the opposite party a bond, with good security, to be approved by the clerk of the court when the valuation is returned, in a penalty equal to double the said valuation and interest, in case the same be sustained, and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court. Provided, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendancy of
62 any proceedings to assess its value as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work, except when it shall be made manifest to said judge or court that great and irreparable injury and damage will accrue to the party applying for the same.

Penalties for obstructing road.

SEC. 5. Be it further enacted, That if any person shall intrude upon said railroad, or any part thereof, by any manner or use thereof, or of the rights and privileges connected therewith, without the permission, or contrary to the will of said company, he, she, or they shall forthwith forfeit

to the said company all the vehicles they may be so intruded on said road, and the same may be recovered by suit at law, and the person or persons so intruding may be also indicted for misdemeanor, and upon conviction fined and imprisoned by any court of competent jurisdiction.

SEC. 6. Be it further enacted, That if any person shall willfully and maliciously destroy, or in any manner hurt, damage, or obstruct said railroad, or any bridge or any vehicle used for, or in the transportation upon the same, such person or persons so offending shall be liable to be indicted therefor, and upon conviction shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars; and shall be further liable to pay all the expenses of repairing the same, of the value thereof; and it shall not be competent for any person so of-
63 funding against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent, or servant of the owner of the land, when or whenever such destruction, hurt, damage, injury, or obstruction was done or caused at the time the same was caused or done.

SEC. 7. Be it further enacted, That every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent, or servant of the company, and the person causing such obstruction may be indicted and punished for creating a public nuisance.

Right to connect with another road.

SEC. 8. Be it further enacted, That any railroad company now charte'd, or hereafter to be chartered in this State, shall have the right to connect their road with the road authorized *to be* this act.

Right of State to levy and collect taxes.

SEC. 9. Be it further enacted, That nothing contained in this act shall prevent the State of Mississippi from levying and collecting such taxes on the property of said company, within the State, as shall, by the legislature thereof, be assessed on the property of the other railroads in this State, nor shall anything therein be construed so as to prevent the chartering and building of other railroads in this State, coming within any distance whatever of said road, anything in the said law of Tennessee to the contrary notwithstanding.

One road to tranrpoat the cars of another.

64 SEC. 10. Be it further enacted, That whenever any railroad company heretofore or hereafter incorporated by this State, connecting with or crossing said railroad or any branch railroad that may be constructed to connect with said railroad, shall require the same, it shall be the duty of the directors of the Memphis and Charleston Railroad to receive on their road the full-freighted cars from such other railroad or branch railroad, and transport the same to their destination, and to return the same without changing the loads thereof, or charging more therefor than is charged for similar freight on their own road: Provided, That said company shall not be compelled to receive such cars on their road un-

less they are constructed of the same gauge with their own cars, and are of sufficient strength, of which the engineer on the said road shall be the judge, and shall not be required to receive them without receiving payment for at least ten miles of transportation: And provided, That said company shall be entitled, in all respects, to similar and equal privileges from all such railroads or branch roads connecting with said railroad as aforesaid, as they are required to perform for such roads, under the same condition and restrictions.

Transfer of stock.

SEC. 11. Be it further enacted, That the stock heretofore subscribed by the citizens of this State to the Memphis and Charleston Railroad Company shall be transferred to the Mississippi Central Railroad at any time within six months after the passage of this act, provided the person or persons owing or owning said stock may request or consent to the same.

65 Surveys.

SEC. 12. Be it further enacted, That the said Memphis and Charleston Railroad Company are hereby required, on the demand of Orlando Davis, A. M. Jackson, C. W. Williams, W. Goodman, and L. W. Clapp, or a majority of them, to pay all sums subscribed and paid by the citizens of Marshall, Tippah, or Tishomingo Counties, or the boards of police of said counties, for the purpose of having any survey or surveys made on the proposed route by Holly Springs, and the expenses connected therewith.

Publication.

SEC. 13. Be it further enacted, That for the purpose of informing the subscribers of stock in the State of Mississippi of the privileges granted by this act, that the secretary of state be, and he is hereby, authorized to have this act published at Holly Springs, Ripley, and Eastport, Mississippi, and in two papers published in Memphis, Ten'essee, which publication shall be paid for by the said Memphis and Charleston Railroad Company.

Right of way.

SEC. 14. Be it further enacted, That the right of way granted by this act shall not vest in the said Memphis and Charleston Railroad Company until said company shall have ratified and confirmed, in a legal and binding manner, and agreement, made on the 30th day of January, 1854, by Daniel B. Turner, Archibald Wright, William D. Bibb, Thomas Mull, and William G. Thompson, on behalf of said company, with the Mississippi Central Railroad Company, and that the act of the legislature of the 16th March, 1852, requiring the governor of the State to furnish the iron upon all roads that may be built, when ten miles of such road shall be
66, 67 completed, shall not apply to said Memphis and Charleston Railroad; and provided that the stockholders of the Memphis and Charleston Railroad residing in the county of Tippah shall be released from the payment of their stock if they make application for such release within four months from the passage of this act, and the amount so re-

leased shall be deducted from the amount which said company proposed, in the above-named agreement, to subscribe stock in a plank-road in said county.

SEC. 15. Be it further enacted, That all acts and parts of acts inconsistant with the provisions of this act be, and the same are hereby, repealed, and that this act shall take effect and be in force from and after its passage.

H. CASSEDY,
Speaker of the House of Representatives.
JOHN J. PETTUS,
President of the Senate.

Approved March 1st, 1854.

JOHN J. McRAE.

OFFICE OF SECRETARY OF STATE,
Jackson, March 3d, 1854.

I, Wm. H. Muse, secretary of *the* state of the State of Mississippi, do hereby certify that the foregoing writing is a just and true copy of the original now on file in this office.

WM. H. MUSE,
Secretary of State.

A true copy. Test.

68, 69 An act to grant the right of way to the Memphis and Charleston Railroad Company to extend their road from Stevenson, in Jackson County, in this State, to the Tennessee line.

Right of way.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened, That the Memphis and Charleston Railroad Company shall have the right of way through the territory of this State, to construct their road from Stevenson, in the county of Jackson, in an easterly or northeasterly direction, to the southern boundary line of the State of Tennessee, or to the western boundary line of the State of Georgia, with a view to continue said road from Stevenson to Chattanooga, on the north side of the Tennessee River.

SEC. 2. Be it further enacted, That said right of way is granted upon the same terms, restri'tions, liabilities, and conditions that the right of way is granted to said company under the charter granted to said company by the general assembly of this State, and approved 7th January, 1850.

Approved February 7, 1856.

A true copy. Test.

70 *Organization of the Memphis and Charleston Railroad Company.*

A convention of the stockholders in the Memphis and Charleston Railroad Company met in Tuscumbia, Alabama, on the 29th day of April, 1850.

The Hon. Clement C. Clay, of Madison County, Alabama, was appointed president of the convention, and R. W. Walker, of Lauderdale, and Sam. Cruse, of Madison, secretaries.

Wm. Maider, E. D. Towns, A. W. Bentley, S. Cruse, R. M. Patton,

R. Hine, and W. A. Austin, commissioners on the part of the State of Alabama, made report of subscriptions to the stock of the company in the following named counties, to wit:

Marshall County	.....	$500 00
Jackson "	.....	15,900 00
Morgan "	.....	12,700 00
Lauderdale "	.....	48,450 00
Lawrence "	.....	50,500 00
Franklin "	.....	57,050 00
Limestone "	.....	66,325 00
Madison "	.....	312,550 00
		$563,975 00

R. C. Brinkley and Geo. W. Smith, commissioners on the part of the State of Tennessee, made report of subscriptions to the stock of the company in that State, amounting to $764,100.00, all of which subscriptions were reported satisfactory, and were accepted.

71 Mr. Scruggs, of Mississippi, addressed the convention, and submitted propositions from the people of Mississippi in reference to the location of the road, which were laid upon the table. April 30, 1859.

April 30, 1859. Convention proceeded to an election; George P. Beirne, Robert Fearn, Robert M. Patton, J. C. Goodloe, W. A. Austin, of Alabama; A. M. Clayton, of Mississippi; James C. Jones, R. C. Brinkley, David Looney, of Tennessee, were declared elected directors of the Memphis and Charleston Railroad Company, to serve for one year. A series of regulations and by-laws were adopted for the government of the company and the formal transaction of business.

A true copy. Test.

73 *Organization of the board of directors.*

Board met in Florence, Alabama, May 1st, 1850, and elected the following officers:

Gov. Jas. C. Jones, president.
Sam. Cruse, treasurer for Alabama.
Geo. W. Smith, treasurer for Tennessee.
C. F. M. Garnett, chief engineer.
A. E. Mills, subscription agent.
A true copy. Test.

74, 75 *Third annual election.*

In pursuance of public notice an election for nine directors in the Memphis and Charleston Railroad Company to serve for one year was held simultaneously in Memphis and in Huntsville, May 3rd, 1852, which resulted in the election of Geo. P. Beirne, A. E. Mills, Samuel Elliott, J. C. Goodloe, S. P. Walker, C. W. Hunt, J. I. Donnegan, R. C. Brinkley, C. L. Thomas.

Board organized at a meeting in Memphis September 13, 1852, by election of A. E. Mills, president; Geo. P. Beirne, declining to serve, Sam. Cruse, sec. and treas. east. div., Sam. Tate, sec. and treas. west. div.

A true copy. Test.

76 *Summary of the proceedings of the convention of the stockholders of the Memphis & Charleston R. R. Company, held at Tuscumbia, Ala., on the 3rd April*, 1854.

Pursuant to the by-laws, and in conformity with the requirements of the charter, a convention of the stockholders of the Memphis and Charleston Railroad Company was held at the Franklin House, in the town of Tuscumbia, Ala., on the 3rd April, 1854.

The convention was called to order by A. E. Mills, president of the company, and Samuel Tate and Samuel Cruse were appointed secretaries.

James Irvine, of Florence, moved the appointment of a committee to ascertain the amount of stock represented in the convention in person and by proxy. Adopted.

Dr. A. A. Burleson, Col. Fennel, and P. J. Watkins were appointed said committee.

Col. John T. Rather, of Morgan, was then called to the chair, as president of the convention.

The committee on representation reported 37,714 shares represented by proxies and 6,260 shares in person. Report received and ordered on file. The reportes of the president and directors, treasurers, and superintendents of transportation were submitted by the president of the company, read, received, and ordered to be printed.

The convention adjourned to meet at 2 o'clock p. m.

EVENING SESSION.

Convention met pursuant to adjournment. Col. Jones T. Rather in the chair.

77 Col. John T. Abernathy offered the following resolution:

"Railroad company the right of way through said State, and that the directors of said company are hereby clothed with authority to comply with the stipulations and obligations required of said company in the act aforesaid."

After free discussion by convention the resolution was adopted by a large majority.

R. M. Patton, of Florence, offered the following resolutions; which were unanimously adopted:

"Resolved, That in the opinion of this committee it is of the first importance to the permanent interest of this company that the Memphis & Charleston Railroad should be extended from its intersection with the Nashville & Chattanooga Railroad on the north side of the Tennessee River to Chattanooga, and that the charter granted by the last legislature of the State of Tennessee authorizing said extension, and granting the aid of the State to said work, be, and the same is hereby, accepted.

"Resolved, That the board of directors be requested to have critical surveys and estimates made of the various routes supposed to be practical, and let the work to contract whenever, in their opinion, it is expedient to do so."

On motion of Mr. Patton, of Florence:

"Resolved, That this convention of stockholders hereby accept the provisions of an act of the legislature of the State of Tennessee, entitled 'An

act to amend an act passed 11th February, 1852, entitled an act to establish a system of internal improvement in said State.'"

Col. Jno. J. Abernathy offered the following amendments to the by-laws, which were unanimously adopted:

78 "Resolved, That the 1st section of the 1st article of the by-laws, in relation to the holding of an annual stockholders' meeting at Holly Springs on 1st Monday in May of each and every year for the election of directors, be, and the same is hereby, repealed.

"Resolved, 2nd. That the 5th section of 2d article of the by-laws be so amended as to give the president, executive committee, or vice-president (if such officer should be appointed by the direction) the power to audit all estimates or accounts against the company, and when so audited or approved, the secretaries and treasurers shall have authority to pay the same."

Dr. Burleson, of Morgan, offered the following resolution, which was unanimously adopted:

"Resolved, That in the opinion of this convention, the best interests of this company would be promoted by the construction of the contemplated railroad from Columbia, Tenn., to Decatur, Ala., and the directors of the company be, and they are hereby, requested to make the most favorable terms they may deem compatible with the interests of this company, with the friends of the said enterprise, for the transportation of freight and passengers from the point of intersection with the Memphis & Charleston Railroad Company to the town of Decatur, either by receiving the freight and passengers from said road, or by allowing the trains to pass over said road from said point of intersection to the town of Decatur.

The convention adjourned sine die.

JOHN T. RATHER,
President of the Convention.

S. CRUSE,
Secr'y, Trea'r Eastern Division.

79 SAM. L. TATE,
Secr'y and Trea'r Western Division.

A true copy. Test.

Time of regular meetings and elections.

Directors' quarterly meeting: Fourth Wednesday in January and July, at Huntsville; and fourth Wednesday in April and October, at Memphis.

Stockholders' annual meeting: Wednesday after the fourth Monday in August.

Annual election of directors by the stockholders: Wednesday after the second Monday in September.

A true copy. Test.

80 *Stockholders' annual convention.*

HUNTSVILLE, ALA., *August* 29, 1866.

Pursuant to the 6th section of the by-laws of the Memphis and Charleston Railroad Company, the stockholders assembled at the court-house in

the city of Huntsville, at 11 o'clock a. m., on Wednesday, August 29, 1866.

Col. Tate called the convention to order, and on motion of Col. Donegan, Judge J. T. Swayne, of Memphis, was called to the chair.

Messrs. J. W. Clay, W. W. Garth, and S. R. Cruse, treasurer of the eastern division, were appointed secretaries. On motion, Messrs. W. R. Rison, Sam. W. Donegan, and Dr. A. H. Jones, were appointed a committee on proxies.

Col. Sam. Tate, president, read the twelfth annual report of the president and directors to the stockholders, embracing the period from the 30th June, 1861, to the 30th June, 1866.

The report was unanimously adopted.

The reading of the reports of the chief engineer and general superintendent was on motion dispensed with.

On motion the meeting adjourned till 2½ o'clock p. m.

AFTERNOON SESSION.

Convention met pursuant to adjournment.

The committee on proxies reported the amount of stock represented in person 54,094 shares, and by proxy 57,388, making together 111,482 shares, being a majority of the stock in the road.

81 On motion the report of the committee was adopted. Co. Wm. Acklen offered the following resolution, which was adopted unanimously:

"Resolved, That the directors of the Memphis and Charleston Railroad are hereby authorized at any time they may think the interest of the company will be promoted thereby, to issue one million of dollars of the second mortgage bonds of this company, as provided for under the amendment of the charter of this company, granted by the State of Alabama, and for the purpose provided for. They are fully authorized to fix the time and place of payment of principal as well as interest; also the rate of interest and the amount of such bond; they are authorized to mortgage the road, its franchises, and all the property, on such terms as they deem proper for the payment of the principal and interest of said bonds, especially reserving to the first mortgage all the rights under and by virtue of said mortgage, which has heretofore been executed by the company, to secure the interests therein contained, as well as the lien heretofore attaching in favor of the State of Tennessee under its internal improvement law and the amendments thereto for all loans received by the company from said State under said law."

Mr. W. S. Hastie, of Charleston, S. C., offered the following: "Resolved, That the thanks of the stockholders of the Memphis and Charleston Railroad are hereby tendered to Sam. Tate, esq., president, and the superintendent, secretary, and treasurer, and the directors of said road,

82 for the very able and elaborate report of the condition and prospects of said road; also for the energy, perseverance, and financial ability displayed by them in managing the affairs of the company through fours years of peril and disaster. Particularly do we appreciate the conduct of our worthy president, who was at times called upon to act upon his own judgment, and to take upon himself heavy responsibilities.

"Resolved, That the directors of the company be requested to inquire into the facts, and if in their opinion justice should require that additional compensation should be tendered to the officers of the Memphis and Charleston Railroad Company for sacrifices made in the service of the company during the war, that they have full power and authority to act as in their judgment may seem just and proper."

Col. E. W. Munford seconded the resolution, and it was unanimously adopted.

Col. Tate returned thanks for the complimentary terms of the resolution.

The following was offered by George P. Beirne, esq., and unanimously adopted:

"Resolved, That it is the sense of the stockholders that the interests of this company demand that the road should be placed in condition at as early a day as possible, compatible with the means of the company, to be run at as good speed and with as much safety as any road. And to that end the recommendation of the chief engineer and president, in relation to the adoption of an improved chair, be approved."

83, 84, 85 Mr. W. S. Hastie offered the following, which was unanimously adopted:

"Resolved, That the president and directors of the Memphis and Charleston Railroad be requested to inquire into the feasibility of building a direct line from a point in North Alabama, connecting with the Memphis and Charleston Railroad to Atlanta, and if a charter can be obtained and means raised to accomplish said object."

Mr. George P. Beirne offered the following, which was unanimously adopted:

"Resolved, That this convention regards with great favor and much interest the projected enterprise of connecting the cities of Memphis and St. Louis by the Memphis and St. Louis Railroad as a vital and most important northwestern connection from the Memphis and Charleston Railroad, and as a work eminently practicable and productive of incalculable benefits to the vast extent of country and people interested."

A resolution of thanks to the president of the convention for the efficient and dignified discharge of his duties was passed unanimously, and Judge Swayne gracefully responded. Resolutions of thanks to the secretaries for the manner in which they had performed their duties, and to the judge of probate and people of Madison County for the use of the court-room for the sessions of the convention were also passed. The convention then adjourned sine die.

J. T. SWAYNE,
President of the Convention.

J. WITHERS CLAY,
W. W. GARTH,
SAM. R. CRUSE,
Secretaries.

A true copy. Test.

86 Upon the foregoing proof the court made an order granting the application of the said plaintiff, and remanding said cause to the circuit court of Jackson County, State of Alabama.

To this ruling of the court the defendant, The Memphis and Charleston Railroad Company, in open court, objected and excepted, and the said defendant also objected and excepted in open court to the order made by this court remanding said cause to said State court of Jackson County, Alabama. And the said defendant, The Memphis and Charleston Railroad Company, now tenders this its bill of exceptions to said ruling and order of this court, and prays that the same may be signed, sealed, and made a part of the record in this cause, which is accordingly done, in open court, this the 6th day of November, 1879.

W. B. WOODS, [SEAL.]
Judge.

87 Be it remembered that heretofore, to wit, on the 6th day of November, A. D. 1879, it being a day of a regular term of the circuit court of the United States for the northern district of Alabama, begun and held at the United States court rooms in the city of Huntsville, in said district, on the first Monday of October, (it being the thirteenth day thereof) A. D. 1879, present and presiding the Hon. Wm. B. Woods, judge of said circuit court, an order was made and entered of record on the minutes of said court in the words and figures following, to wit:

Motion to remand to State court.

THE STATE OF ALABAMA, FOR THE USE OF Jackson County,
vs.
THE MEMPHIS AND CHARLESTON RAILROAD Company.

Come the parties by their attorneys, and the plaintiff, by his attorney, moves the court to remand this cause to the circuit court of Jackson County, Alabama.

Whereupon, after argument of counsel and due consideration by the court, it is considered by the court that the said motion be sustained.

To which ruling of the court the defendant excepts.

88 Circuit court of the United States for the northern district of Alabama.

THE STATE OF ALABAMA, FOR THE USE OF Jackson County, plaintiff,
vs.
THE MEMPHIS & CHARLESTON RAILROAD CO., defendant; William R. Larkin et al., garnishees.

Now comes the defendant, The Memphis & Charleston Railroad Company, by its attorneys, and prays for the allowance of a writ of error from the order and judgment of this court, remanding said cause to the State circuit court of Jackson County, Alabama. It is ordered that the writ of

error prayed for be allowed on defendant's giving bond with security in the sum of five hundred dollars.

W. B. WOODS,
U. S. Judge.

Nov. 6th, 1879.

(Endorsed:) Filed in open court this Nov. 6, 1879. A. W. McCullough, clerk.

89 Circuit court of the United States for the northern district of Alabama.

THE MEMPHIS AND CHARLESTON RAILROAD Company, and William R. Larkin et al., appellants,
vs.
THE STATE OF ALABAMA, FOR THE USE OF Jackson County, appellee.

Know all men by these presents that we, The Memphis & Charleston Railroad Company as principal, and George P. Beirne and George W. Bryant, as sureties are held and firmly bound unto the State of Alabama, for the use of Jackson County, in the sum of five hundred dollars, to be paid to the said State of Alabama for the use of Jackson County, its legal representatives or assigns; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this the 6th day of November, A. D. 1879.

The condition of the above obligation is such that whereas the above-named The Memphis and Charleston Railroad Company has prayed and obtained an appeal to the Supreme Court of the United States from a judgment of said circuit court rendered in said cause on this day, namely, on November the 6th, 1879, remanding said cause to the State circuit court of Jackson County, Alabama, and to reverse said judgment:

90 Now, therefore, if the above-named The Memphis and Charleston Railroad Company shall prosecute its said appeal to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY,
By S. R. CRUSE, *Sec'y & Treas.*
GEO. P. BEIRNE.
G. W. BRYANT.

We, the sureties to the above bond, being each duly sworn, do say that we are each worth five hundred dollars in property situated in the said northern district of Alabama, over and above all exemptions allowed by the law.

GEO. P. BEIRNE.
G. W. BRYANT.

Nov. 6, 1879.

Sworn to and subscribed before me this Nov. 6, 1879, in open court.
W. B. WOODS, *Judge.*

Nov. 6, 1879.

The above bond is hereby approved.

W. B. WOODS,
U. S. Judge.

(Endorsed:) The State of Alabama, for the use of Jackson County, vs. The Memphis & Charleston R. R. et al. Bond for appeal. Filed in open court Nov. 6, 1879. A. W. McCullough, clerk.

91 Supreme Court of the United States.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, appellant,
vs.
STATE, USE OF JACKSON COUNTY, APPELLEE.

Assignment of errors.

1. The court below erred in its order remanding said cause to the circuit court of Jackson County, Alabama.
2. The court erred in granting the motion made by appellee to remand said cause to the State circuit court for Jackson County.
3. The court erred in its judgment rendered, declining to take jurisdiction of this cause, and remanding the same.

MILTON HUMES,
Att'y for Appellant.

(Indorsed:) Sup. Court U. S., 1879, October. No. 1145. Memphis & Charleston R. R. Co. vs. State of Alabama, use of Jackson County. Assignment of errors. Filed 8' March, 1880. Office Supreme Court U. S. Filed Mar. 8, 1880. D. W. Middleton, clerk.

92 Circuit court of the United States for the northern district of Alabama.

THE STATE OF ALABAMA, FOR THE USE OF Jackson County, plaintiff,
vs.
THE MEMPHIS & CHARLESTON RAILROAD COMPANY, defendant; William R. Larkin et al., garnishees.

Now comes the defendant, by its attorney, and gives notice of its intention to appeal this cause to the Supreme Court of the United States; whereupon the court fixed the penalty of the appeal bond at the sum of five hundred dollars, with good and sufficient securities.

Said bond to be approved by the judge of this court, and to operate as a supersedeas.

And it is ordered that the writ of error prayed for by defendant be allowed upon defendant's executing said bond.

Nov. 6th, 1879.

W. B. WOODS,
U. S. Judge.

(Endorsed:) Filed in open court this Nov. 6, 1879. A. W. McCullough, clerk.

NORTHERN DISTRICT OF ALABAMA:

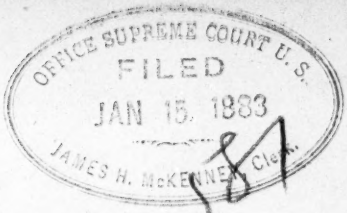
I, A. W. McCullough, clerk of the circuit court of the United States for the northern district of Alabama, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the proceedings had in the case of The State of Alabama, for the use of Jackson County, versus The Memphis and Charleston Railroad Company, as appears from the records of said court, now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in the city of Huntsville, in said district, this 24th day of February, A. D. 1880.

[SEAL.] A. W. McCULLOUGH,
Clerk of the U. S. Circuit Court, Northern District of Alabama.

(Indorsement on cover:) No. 195. The Memphis and Charleston Railroad Company, appellant, vs. The State of Alabama, for the use of Jackson County. N. Alabama C. C. U. S. Filed 8th March, 1880.

(Stamped:) Office Supreme Court U. S. Filed Mar. 8, 1880. D. W. Middleton, clerk.



17-587

Supreme Court of the United States

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, APPELLANT,
vs.
THE STATE OF ALABAMA FOR THE USE OF JACKSON COUNTY, APPELLEE.

No. 195.

BRIEF.

HUMES, GORDON & SHEFFEY,
POSTON & POSTON,
W. Y. C. & L. W. HUMES,
Counsel for Plaintiff in Error.

S. C. TOOF & CO., PRS. & LITHS. MEMPHIS.

Supreme Court of the United States

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, APPELLANT,
vs.
THE STATE OF ALABAMA FOR THE USE OF JACKSON COUNTY, APPELLEE.
} No. 195.

ASSIGNMENT OF ERRORS.

1. The court below erred in its order remanding said cause to the Circuit Court of Jackson County, Alabama. Record p. 36 at bottom and p. 37. (Marg. pp. 86 and 87.)

2. The court erred in granting the motion made by appellee to remand said cause to the State Circuit Court for Jackson County. Record p. 36 at bottom and p. 37. (Marg. pp. 86 and 87.)

3. The court erred in its judgment rendered, declining to take jurisdiction of this cause and remanding the same. Record p. 36. (Marg. p. 87.)

STATEMENT OF FACTS.

The record shows that at the October Term, 1879, of the Circuit Court of Jackson County, Alabama, a complaint was filed against the Memphis and Charleston Railroad Company by the State of Alabama for the use of Jackson County, claiming $3,759.55 with interest from Nov. 30, 1869, as delinquent and escaped taxes for that year due the tax-collector of said Jackson County from said Memphis and Charleston Railroad Company.

Record pp. 2, 3, 4.

On October 28, 1879, was filed with the clerk of the Circuit Court of Jackson County the petition and bond to remove said cause to the Circuit Court of the United States for the Northern District of Alabama on the ground that plaintiff is a citizen of Alabama and that petitioner is a citizen of Tennessee, and the amount involved exceeds $500 exclusive of costs. Record p. 6.

The transcript was duly filed in the office of the clerk of said Circuit Court of the United States on Oct. 39, 1879. Record p. 8.

On the 4th of November, 1879, said plaintiff filed its answer to said petition for removal, in which it averred that although the Memphis and Charleston Railroad Company was incorporated by the State of Tennessee, it was also incorporated by the State of Alabama, and therefore was a citizen of the latter State to such extent as to preclude its right to claim the privilege of removal of said suit. Record pp. 8 and 9.

And on the same day plaintiff entered its motion to remand said cause to the State Court upon the following stated grounds:

1. Because the Circuit Court of the United States has no jurisdiction of the said cause on the facts of this case as shown by the whole record.

2. Because the Circuit Court of the United States has no jurisdiction of this cause in the facts of this case as set forth in the sworn answer of the plaintiff to the petition of defendant, this day filed in this court in the form and nature of a plea in abatement to the jurisdiction of this court.

3. The said suit is in legal contemplation a suit between citizens of the same State. It is a controversy between

plaintiff, who is a citizen of Alabama, and the Memphis & Charleston Railroad Company, a corporation created by and having a corporate existence in the State of Alabama under the laws of said State, and hence it is a controversy in the purview of the law between citizens of the same State, that is to say, of the State of Alabama. Record pp. 10 and 11.

The following evidence was introduced upon the trial of said motion, and was relied upon by both parties, it being admitted that said proof was in all respects regularly and legally made, the defendant insisting that under said proof it was shown to be a citizen of the State of Tennessee, and the plaintiff insisting that thereunder the defendant was shown to be a citizen of the State of Alabama. Record p. 11. Said proof was:

1. The act incorporating the Memphis & Charleston Railroad Company, passed by the Legislature of the State of Tennessee on Feb. 2, 1846, record pp. 11 to 20, and amendments thereto passed Feb. 25, 1852, record p. 21, and Jan. 29, 1856, record pp. 25 and 26.

2. The act of the Legislature of the State of Alabama, passed January 7th, 1850, by which is granted to the Tennessee corporation, the Memphis & Charleston Railroad Company, a RIGHT OF WAY through the State of Alabama, record pp. 21 to 23, and amendments thereto passed Feb. 12, 1850, record 23 and 24, and Feb. 6, 1852, record p. 24.

3. The act of the Legislature of the State of Mississippi granting a similar right of way through the State, passed March 1, 1854. Record pp. 26 to 30.

4. Act of the Alabama Legislature granting the right of way to said company to extend its road from Stevenson, in

Jackson county, Ala., to the Tennessee line, passed February 7, 1856. Record p. 30.

5. Extracts from the minutes showing the organization.

Upon this proof the circuit judge made an order granting the application of the said plaintiff, and remanding said cause to the Circuit Court of Jackson county, State of Alabama. To which ruling of the court and to its said order remanding the cause the defendant duly excepted. Record pp. 35, 36.

1. The court below erred in its order remanding said cause to the circuit court of Jackson county, Alabama. Record p. 36 at bottom and p. 37 (Marg. pp. 86 and 87.)

2. The court erred in granting the motion made by appellee to remand said cause to the State circuit court for Jackson county. Record p. 36 at bottom, and p. 37 (Marg. pp. 86 and 87).

3. The court erred in its judgment rendered, declining to take jurisdiction of this cause and remanding the same. Record p. 36 (Marg. p. 87).

ARGUMENT AND AUTHORITIES.

There is but one question presented by the record. It does not admit of argument that the plaintiff, Jackson county, is for jurisdictional purposes a citizen of Alabama, under whose laws it is created and organized.

Cowles v. Mercer county, 7 Wall. 118.
McCoy v. Washington county, 3 Wall., Jr. C. C., 381.
Barclay v. Levee Commissioners, 1 Woods C. C. 254.

This proposition has never been controverted by appellee; on the contrary, in the third ground of its motion to remand is the express admission that "plaintiff is a citizen of Alabama." Record p. 10.

The single question then is whether by the acts of Assembly set out in the record, the Memphis & Charleston Railroad Company was, for the purposes of removability under the act of Congress of 1875, an Alabama corporation.

It was thus expressly held by the learned justice of the court from which this appeal is taken, upon a consideration of the same statutes and upon a motion similar to that presented in this record.

Copeland v. Memphis & Charleston R. R. Co., 3 Woods C. C. 651.

As to the history of that case after the said order of remand to the State court, it may be proper to add that an appeal was prosecuted to this court; but meanwhile, a trial was had in the State court, and a verdict and judgment obtained against said railroad company.

From that judgment an appeal was taken to the Supreme Court of the State, resulting in a reversal of the case and a

decision that the trial court should instruct the jury upon the evidence to find for the said railroad company.

Memphis & Charleston Railroad Company v. Copeland, 61 Ala. 376.

That decision was conclusive of the case upon the merits, and upon its abandonment by plaintiff, the proceedings by appeal in this court were dismissed.

Upon the representation of the same question in the present case, Mr. Justice Wood, then circuit judge, adhered to his ruling in the Copeland case *supra*.

We address ourselves to the consideration of the single question presented, viz., did the acts of the Alabama Legislature create an independent domestic corporation? or did it grant the right of way to the Tennessee corporation?

We say that the intention and effect of the Alabama Legislature was to grant the right of way to the railroad company which had been incorporated by the Legislature of Tennessee. In support of this construction, we rely upon the following authorities:

Balt. & Ohio R. R. Co. v. Harris, 12 Wall. 65.
Railroad Co. v. Whitten, 13 Wall. 284.
Williams v. Missouri R. R. Co., 3 Dillon 367.
Treadway v. Chic. & N. W. R. R. Co., 21 Iowa 351.
Exparte Schollenberger, 96 U. S. 369.
St. Louis, &c., R. R. Co. v. Ind. & St. Louis R. R. Co., U. S. C. C., D. Indiana, opinion by Drummond J., 9 Reporter (Jan., 1880) p. 103.
Railroad Co. v. Kountz, 104 U. S. 5.

In the course of the opinion delivered in Copeland v. R. R. *supra*, it was said by the learned judge: "The first section

of the Alabama act standing alone gives strong warrant to the idea that the act is only an enabling act.

"If the act consisted of the first section only, and its title were 'An act to confirm an act passed by the Legislature of Tennessee to incorporate the Memphis & Charleston Railroad Company,' the controversy would fall directly under the authority of the case of the Railroad Company v. Harris, 12 Wal. 65, where it was held that such a law did not create a new corporation, but granted permission to a corporation of another State to exercise its functions within the boundaries of the State by which the act was passed." * * *

The case of Williams v. Missouri, Kansas & Texas Railway Company, 3 Dillon 267, would also be an authority to support the view of the defendant, if the Alabama act consisted of the first section only, with the title changed as above suggested.

But the act under consideration does not stop with the first section; several sections are added. It is, to my mind, very significant, that in the first section the company is called 'the said company.' The section begins, 'that said company shall be authorized and required to open books,' etc. The fourth section declares 'that said company shall at the first meeting of stockholders,' etc., and throughout this act until we reach the seventh section the company is referred to as the 'said company,' but in the seventh section, however, this phrase is abandoned as if designedly, and the company is twice designated as the company hereby incorporated. Why this change? It was more natural to continue the use of the phrase 'the said company' which had been employed seven times in the preceding sections of tne act. But the Legislature, with the apparent design of giving a construction

to what had been done by the first section, declares in the seventh, that 'the company hereby incorporated shall not locate their road,' etc., 'and it shall be lawful for the company hereby incorporated to acquire by purchase,' etc.

The importance of the title of the act is next considered as to its weight in resolving the doubt in regard to the intention of the Legislature, and the conclusion is reached that the doubt is removed by the title.

Copeland v. M. & C. R. R. Co., 3 Woods 662–663–664.

Now our position is that the Alabama act of 1850 certainly granted to appellant nothing more than was *expressly* granted. This is the statement of a truism. That act *did not* expressly grant independent corporate powers to appellant as a new-created domestic corporation. It DID EXPRESSLY grant a right of way to appellant as a Tennessee corporation through the State of Alabama. Corporate powers can not be created by implication or extended by construction.

Abbott's Dig. of Corporations, p. 152, § 70.

Ib. p. 151, § 64.

This is our answer to the reasoning of the court in Copeland's case, that the use of the terms "the company *hereby incorporated*" in the 7th section of said act, was strictly and affirmatively an independent domestic incorporation of said company.

AS TO THE TITLE.

The title of an act is entitled to very little weight.

Potter's Dwarris on Stat. p. 102–3.

Sedgwick on Const. of Stat. Law (2d ed.) p. 40.

Hadden v. Collector, 5 Wall. 110.

Bartlett v. Morris, 9 Port. 266.

On the other hand, the preamble of an act is entitled to *great weight.*

Potter's Dwarris 107, 265, 269.

Beard v. Rowen, 9 Pet. 301, 317.

It is in general true that the preamble of a statute is a key to open the mind of the makers as to the mischiefs intended to be remedied.

6 Bacon's Abridg. * 380; Tit. "Statute," I 2.

And the body of the act, the *purview*, the *providing part*, the *enacting clause* must have greatest weight. If that is unambiguous it should be conclusive.

Sedgwick on Stat. and Const. Law (2d ed.) p. 45.

The granting clause determines the interest to be conveyed and prevails over the introductory statement.

Webb v. Webb, 39 Ala. 588.

Kirshaw v. Boytten, 1 Brevard 301.

So the devising clause in a will.

Denson v. Mitchell, 26 Ala. 360.

In the statute we are considering, the preamble is not only in perfect harmony with the enacting clause, but in immediate connection with it. "Whereas, an act was passed by the State of Tennessee, bearing date the 2d day of February, 1846, and the same was amended by an act of the same State, dated February 4, 1848, for the formation of a company, under the name and style of the 'Memphis & Charleston Railroad Company,' for the purpose of establishing a communication by railroad between Memphis, Tenn., and Charleston, S. C.; and whereas, it is believed that the most eligible *route* for said road is through a portion of this State; and whereas, it is also believed that great and lasting benefits

will accrue to the inhabitants of this State from said improvement; *therefore* * * *

(RIGHT OF WAY.)

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the said company SHALL HAVE THE RIGHT OF WAY through the territory of this State to construct their road along the valley of the Tennessee river to the town of Huntsville, and thence to some point on the Nashville and Chattanooga Railroad, or to some point on the Georgia or other railroad leading eastwardly, so as to communicate with Charleston and other Atlantic ports, and that said company shall have the right of way over the bed or bank of the Muscle Shoals Canal, provided it can be found necessary in the construction of said road, and shall also have the right of way through any lands belonging to the State of Alabama or to the Bank of the State of Alabama, or to any branch bank of said State, together with the right to use any stone, timber or other materials on said lands, necessary in the construction of said road, and said company shall have and enjoy all the rights, powers and privileges granted to them by the act of incorporation above mentioned, and shall be subject to all the liabilities and restrictions imposed by the same, together with the following requirements." * * *

It was virtually conceded, in the opinion in Copeland's case *supra*, that if the enactment in question had stopped with its first section it would have been merely an enabling act, and the controversy would be governed by the principles announced in Railroad Company v. Harris, *supra*, and Williams v. Railway Company, *supra*, but the first section of said act is as absolutely controlling as if the Legislature had stopped with it. Eliminate the first section and there is no

enactment; and by the concluding words of the first section the nature and extent of the subsequent sections are expressly limited and defined. Said company shall enjoy all the rights and be subject to all the liabilities of the Tennessee act, "together with the following requirements." So that by terms as clear as those employed to grant the right of way, it is declared that all the subsequent sections of this act are simply REQUIREMENTS. In other words, certain specified conditions and requirements are to be imposed upon the Tennessee corporation in addition to those enumerated by the Tennessee charter, and these super-imposed conditions are simply annexed to that which alone is the subject of grant by the Legislature, viz: The right of way through Alabama. Such construction ought to be put upon a statute as may best answer the intention which the makers had in view, for *qui haeret in litera, haeret in cortice.* The intention of the makers of a statute is sometimes to be collected from the cause or necessity of making the statute, at other times from other circumstances. Whenever this can be discovered it ought to be followed with reason and discretion in the construction of the statute, although such construction seems contrary to the letter. A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. A thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers.

6 Bacon's Abridg. * 384; Tit. "Statute," I 5.

"The object of all rules of construction," says Mr. Justice Coleridge, "being to ascertain the meaning of the language used, and it being unreasonable to impute to the Legislature *inconsistent interests* upon the same general subject matter, what it has clearly said in one part must be the best evidence

of what it had intended to say in the other; and if the clear language be in accordance with the plain policy and purview of the whole statute, there is the strongest reason for believing that the interpretation of a particular part inconsistently with that, is a wrong interpretation. The court must apply, in such a case, the same rules which it would use in construing the limitations of a deed; it must look to the whole context, and endeavor to give effect to all the provisions, enlarging or restraining, if need be, for that purpose, the literal interpretation of any particular part."

Rex v. Poor Land Commissioners of St. Pancras, 6 Ad. & El. 7.

The application of this principle of construction to the statute here would seem conclusive. It cannot be denied that the first and principal section, the enacting clause, is free from all obscurity and doubt; and that its clear language is in accordance with the plain policy and purview of the whole statute. But the interpretation given the incidental employment by the law-makers, in the seventh section, of the terms "hereby incorporated" in connection with the title of the act, is an interpretation given to subordinate and dependent parts of the act (and the only parts) which are inconsistent with the otherwise clear language and intent. We employ the language of Judge Coleridge to ask if there is not the strongest reason for believing this to be a wrong interpretation.

Besides, in the seventh section and title of the act are found the only obscurity and difficulty; and if the main clauses of the statute were themselves not clear the maxim, "*Semper in obscuris, quod minimum est sequinum,*" would dominate the more obscure.

Broom's Leg. Max., *536 and note 3.

Strongly confirmatory of our view of the question of legislative intent is the subsequent Alabama enactment of February 7, 1856, entitled "An act to grant the right of way to the Memphis & Charleston Railroad Company to extend their road from Stevenson, in Jackson county, in this State, to the Tennessee line." That act is found on p. 30 of the record and is as follows:

RIGHT OF WAY.

"Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That the Memphis and Charleston Railroad Company shall have the right of way through the territory of this State to construct their road from Stevenson, in the county of Jackson, in an easterly or north-easterly direction to the southern boundary line of the State of Tennessee, or the western boundary line of the State of Georgia, with a view to continue said road from Stevenson to Chattanooga on the north side of the Tennessee River.

"Sec. 2. Be it further enacted, That said right of way is granted upon the same terms, restrictions, liabilities and conditions that the right of way is granted to said company under the charter granted to said company by the General Assembly of this State, and approved 7th January, 1850."

It is well settled that in construing a doubtful statute, and for the purpose of arriving at the legislative intent, all acts on the same subject matter are to be taken together and examined in order to arrive at the true result. * * * * Different statutes *in pari materia*, though made at different times, said Lord Mansfield, shall be taken and construed together as one system and explanatory of each other.

Sedgwick on Const. and Stat. Law, 2d ed., pp. 209–10.

The preamble of an act cannot be used to contradict the enacting clause, but may be looked to, to learn the object and reason of the statute.

Potter's Dwarris on Statutes, p. 269.

The preamble to the statute of Alabama, under consideration, recites the existence of the Memphis and Charleston Railroad Company as a corporation, created by an act passed by the State of Tennessee on the 2d of February, 1846, and amended February 4th, 1848, to establish a railroad communication between Memphis, Tennessee, and Charleston, S. C., and further recites that the most eligible route for said road is through a portion of Alabama, and the great and lasting benefits to accrue to the people of Alabama from this improvement.

It is thus manifest that the preamble presents as the object of this act, a company created and chartered by Tennessee seeking a route through a portion of Alabama; that is, *an existing corporation*. needing simply a right of way through a portion of Alabama.

Then follows the enacting section expressly providing, "That *said company shall have the right of way* through the "territory of Alabama;" and then expressly provides: "and "said company shall have and enjoy *all the rights, powers and* "*privileges granted to them by the act of incorporation above* "*mentioned*, and subject to all the liabilities and restrictions "imposed by the same, together with the following require- "ments."

Having recited expressly and carefully, the existence of the *Tennessee corporation*, by its name, charter, and date of charter, and corporate purpose, this enacting section expressly

gives "*the said company the right of way through the territory* "*of Alabama.*"

Here is a clear, plain, unambiguous, explicit, and express grant *to the Tennessee corporation, by name*, of the right of way, and an entire absence of words creative of a new corporation. And as if to remove all possible doubt, the final enacting clause of this first section, (instead of using words creative of a new corporation and clothing it with corporate powers,) expressly provides, "*that said company* shall have "and enjoy all the rights, powers and privileges *granted to* "*them by the act of incorporation above mentioned*, and subject "to all the liabilities and restrictions imposed by the same."

Language cannot be found, which would more clearly express the simple grant of the right of way to a named corporation under its foreign charter.

Now, this is the grant expressed in the enacting section, when the legislative mind was attentive to and intent upon the nature, character and purpose of the grant, and when it was expressing the terms of the grant.

The last clause of this first section provides that said company "shall be subject to all the liabilities and restrictions imposed by" its Tennessee charter, "together with the following requirements."

The remaining nine sections of the act are wholly devoted to setting forth these requirements. The 2d, 3d, 4th and 6th sections all expressly refer to the Tennessee corporation, calling it "*the said company*," and imposing the requirements on *said company.*

The 7th section prohibits the company from locating their road on the track of the Tennessee Valley Railroad, or any

other railroad; and in setting forth this requirement the company is described as "*the company hereby incorporated.*"

We insist that in a clause setting forth the requirements to which the company is subjected, and when the legislative mind was intent on expressing a simple requirement, to describe the company as *the company hereby incorporated* should not be permitted to annul the express grant made in the enacting clause. This would be to permit a mere name or description of the grant, incidentally made in setting forth a requirement, to override the express terms of the enacting clause.

The enacting section, in clear and precise terms, grants the right of way to the Tennessee corporation, and by the rules of sound construction, "it is not permitted to interpret what has no need of interpretation;" and it is in violation of this rule to allow a mere name or description incidentally made to do away with the manifest sense of the enacting clause.

United States v. Fisher, 2 Cranch 358.
Potter's Dwarris on Statutes, p. 143, 146.

There is in this statute a total absence of any provisions for the organization of a new corporation, or for the exercise of the powers essential to bring a new corporation into operation; but by the first section this corporation is to exercise the powers, rights and privileges *granted to it by the Tennessee charter.* We submit, this consideration is of controlling power on this question of construction.

The General Assembly of the State of Alabama on the 7th of February, 1856, amended the act of 1850, and therein enacted, "That the Memphis & Charleston Railroad Company "shall have the right of way through the territory of this "State to construct their road from Stevenson, Ala., in an

"easterly or north-easterly direction to the southern boundary "line of the State of Tennessee, or to the western boundary "line of Georgia, with a view to continue said road from Ste- "venson to Chattanooga."

This subsequent act is a statute *in pari materia* with the former act, and its provisions show the meaning of the former act, and that meaning is the true construction of the former statute. This court has said, in Alexander v. Mayor, &c., 5 Cranch 1, "If a subsequent act on the same subject affords "complete demonstration of the legislative sense of its own "language, the rule already stated, requiring that the subse- "quent act should be incorporated into the prior act, is a "direction to guide the courts in expounding the provisions "of the law."

HUMES, GORDON & SHEFFEY,
POSTON & POSTON,
W. Y. C. & L. W. HUMES,
For Plaintiff in Error.